



IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

HORTHERN DIST. OF TX. FT. WORTH DIVISION 2011 DEC 12 PM 4: 22

MARTHA L. PRICE AND	8	CLERK OF COURT
ANGELA L. PRICE,	§	
Plaintiffs,	§ §	
VS.	§ 8	Civil Action No. 4:11-CV-799-A
	8 §	Civil Action 110, 4.11-C 1-777-A
BANK OF AMERICA, N.A., THE BANK	§	
OF NEW YORK MELLON FKA THE	§	
BANK OF NEW YORK, AS TRUSTEE	§	
FOR CWABS, INC., ASSET BACKED	§	
CERTIFICATES, SERIES 2007-02,	§	
	§	
Defendants.	8	

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED PETITION FOR FAILURE TO STATE A CLAIM

Defendants Bank of America, N.A. ("BANA") and The Bank of New York Mellon, as trustee ("BONY") (collectively, "Defendants") move to dismiss plaintiffs' first amended petition under Federal Rule of Civil Procedure 12(b)(6) because, as pleaded, the petition fails to state a claim upon which relief can be granted. Because the Prices' central claim regarding Defendants' authority to foreclose is unambiguously wrong under Texas law. As to their other claims, they simply assert no facts that could animate a cause of action for which Defendants could be liable. Moreover, the claims fail because the Prices failed to plead sufficient facts to allow the court to draw a reasonable inference that Defendants committed the misconduct alleged in the complaint. These claims should therefore be dismissed. In support of its motion, Defendants submit a Brief in Support, as well as a Proposed Order to the court.

Date: December 12, 2011

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS BANK OF AMERICA, N.A. and THE BANK OF NEW YORK MELLON, AS TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2011, a true and correct copy of the foregoing was served as follows:

Caleb Israel Moore Law Firm of Caleb Moore 2205 Martin Drive Suite 200 Bedford, TX 76021 817.581.2540 (Facsimile) Attorney for Plaintiff VIA FACSIMILE

Walter McInnis